

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 919 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SAVAIKHAN UMARKHAN BABI

Versus

STATE OF GUJARAT

Appearance:

MR PRASHANT G DESAI for Petitioner
Mr. HL Jani APP for Respondent No. 1
MR YOGESH S LAKHANI for Respondent No. 2to 6
MR DIVYESH SEJPAL for Respondent No. 7

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/06/2001

ORAL JUDGEMENT

Heard Mr. Desai, learned advocate for the petitioner, Mr. Jani, learned APP for respondent No.1,

Mr. Lakhani, learned advocate for respondents nos. 2 to 6 and Mr. Sejpal, learned advocate Mr. 7. In this petition, the petitioner is challenging the two orders dated 30th October, 1999 and 29th September, 2000. In view of the report at page 57 annexure "G" submitted by the IO concerned that the complaint filed against the accused is false and request made for granting "B" summary by letter dated 6th August, 1999, the learned JMFC concerned passed order dated 30.10.1994 at page 94 and granted "B" summary against the petitioner herein but with prosecution against the petitioner. Against the said order passed by the learned Magistrate concerned, the petitioner approached the learned Additional Sessions Judge, Mehsana by filing revision application no. 245 of 1999 which came to be rejected by the learned Additional Sessions Judge, Mehsana by order dated 29th September, 2000. Therefore, the petitioner has filed the present petition before this court challenging the said two orders passed by the Courts below.

2. This Court while issuing rule on 29th November, 2000 has passed the following order :

"Mr. Prashant G. Desai for the petitioner.

Having heard the learned counsel for the petitioner, though I do not find any illegality in the order of both the courts below, but only to the extent where Magistrate ordered for prosecution of the petition, this petition is admitted. Accordingly, rule returnable on 19.12.2000."

Therefore, this petition has been admitted for limited purpose against the directions issued by the learned Magistrate granting "B" summary with prosecution against the petitioner.

Today, when the matter was taken up for hearing, learned advocate Mr. Prashant G. Desai appearing for the petitioner has submitted that there was settlement between the parties out side the Court in respect of the report of the concerned IO praying for granting "B" summary which has been accepted by the learned Magistrate and for that, there is no dispute between the parties and this question does not require any adjudication by this Court. He has, however, submitted that they are now challenging the order of the learned Magistrate in so far as it relates to grant of "B" summary with prosecution against the petitioner. I have also heard the learned advocate Mr. Lakhani for respondents no.2 to 6 and Mr. Sejpal for respondent No.7 and Mr. Jani, learned APP for respondent State.

I have considered the submissions made by the learned advocates for the parties. According to my opinion, in the report submitted by the IO concerned which is at page 57 and 58 of the petition, there is no recommendation made by the IO concerned for granting "B" summary with prosecution against the petitioner. That is one aspect of the matter. Secondly, while passing the orders on 30th October, 1999, the learned Magistrate has not given any reasons for granting "B" summary with prosecution. The learned Magistrate has only dealt with the report submitted by the IO concerned but in the operating portion, the Magistrate has passed an order to grant "B" summary with prosecution but for granting "B" summary with prosecution, no reasons have been recorded by the learned Magistrate. This aspect has not been considered by the learned Additional Sessions Judge, Mehsana while dealing with the criminal revision application no. 245 of 1999 while passing the order dated 29th September, 2000. Thus, the learned Magistrate has committed error in granting "B" summary with prosecution though the IO concerned has not asked for "B" summary with prosecution in his report and the learned Additional Sessions Judge has also erred in not considering the report of the IO concerned wherein no prayer has been made for granting "B" summary with prosecution and has also erred in not appreciating that the order passed by the learned Magistrate was not supported by reasons.

In view of these facts, the order passed by the learned Magistrate on 30th October, 1999 as confirmed by the learned Additional Sessions Judge, Mehsana in Criminal Revision Application NO. 245 of 1999 dated 29th September, 2000 is required to be quashed and set aside in so far as it relates to grant of "B" summary with prosecution against the petitioner.

Accordingly, this petition is partly allowed. The impugned order dated 29th October, 1999 passed by the learned Magistrate concerned as confirmed by the learned Additional Sessions Judge in Criminal Revision Application No. 245 of 1999 by order dated 29th September, 2000 is quashed and set aside in so far as it relates to grant of "B" summary with prosecution against the petitioner. It is, however, clarified that the order of grant of "B" summary passed by the learned Magistrate shall remain in tact. Rule is made absolute in terms indicated hereinabove.

Vyas